IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION.

CRIMINAL APPEAL NO. 696 OF 2000.

Shri Jaspal Singh Kohli]	
having his address at Block]	
No.10, 2nd floor, 26,]	Appellant
Avatikabai Gokhale Road]	(Original
Mumbai-400 004.]	Complainant)
versus	
1. Mrs.Adarsh Kaur Kohli,]	
residing at A-2 Punjab]	
Co-operative Housing]	
Society Ltd., 20 Tagore]	Respondents.
Road, Santacruz (West)]	(No.1 being the
Mumbai-400 054 and]	Original
H-3/18 Model Tower,]	Accused No.4)
Part II, Delhi-110 009.]	
2. State of Maharashtra]	

Mr.Marwadi with Mr.Subhodh Desai for the appellant.

Mr.V.T.Tulpule with Harshad Bhadbhade for Respondent No.1.

Mr.D.R.More, APP, for the State.

ALONG WITH

CRIMINAL REVISION APPLICATION NO.121 OF 2001

1. Pal Enterprises,]
   Having its office at 25,]
   Avantikabai Gokhale Road]
   Mumbai 400 004.]
2. Taranjit Singh Kohli]
   Residing at : Punjab Co-op]
   Hsg. Soc., 20, Tagore Road]
   Santacruz (W), Mumbai 400 054]
3. Inderpal Singh Kohli]
   Residing at : H-3/18, Model]
   Town, Part II, Dehli 110 009] Applicants.

versus.

1. The State of Maharashtra]
2. Jaspal Singh Kohli,]
   Residing at 501, West End]
   15th Road, Santacruz (West)] Respondents.
   Mumbai 400 054.]

Mr.V.T.Tulpule with Harshad Bhadbhade for the applicants.

Mr.D.R.More, APP, for the State/Respondent No.1.

Mr.A.P.Mundergi with Mr.Subhodh Desai for Respondent No.2.

CORAM : D.G.DESHPANDE,J.

DATED : 24th August 2004.

ORAL ORDER

1. The Appeal No.696 of 2000 is filed by the original complainant against acquittal of Accused No.4 in a case under Section 138 of the Negotiable Instruments Act. The accused No.4 being a lady by name Mrs.Adarsh Kaur Kohli. The Revision Application No.121 of 2001 is filed by three accused against their conviction by the Sessions Court, which was confirmed.

2. On 16.02.1998 the accused issued a cheque for Rs.3,00,000/- drawn on Punjab & Sindh Bank signed by Accused No.2 as partner. Thereafter, the accused filed a complaint to the police against the complainant making allegations that the cheques were obtained from them under threats. This complaint dated 17.02.1998 was subsequently withdrawn by the accused.

3. On 18.03.1998 the cheque came to be deposited and it was returned unpaid on 21.03.1998 along with two bank memos which came to be subsequently exhibited as Exhibit P-4 and P-5. The complainant issued notice to the accused under Section 138 of the Negotiable Instruments Act. The notice was received by all the accused and, when no payment came from the accused, a criminal complaint case was filed vide C.C.No.1092/S/98 in 40th Court, Girgaum. Process was issued by the court to the accused, and, on the very first date of their appearance or thereabout i.e. on 11.03.1999 the accused gave an undertaking to the Court singed by all the four accused to the effect that they are admitting their liability in respect of the dishonoured cheque of Rs.3,00,000/- which was the subject matter of the case before the Court. The accused agreed to pay to the complainant Rs.1,00,000/- on 19th March 1999 and further gave an undertaking to the court to pay the balance sum of Rs.2,00,000/- on or before 15th April 1999. The accused thereby prayed that their undertaking be accepted and the matter be adjourned to 15th April 1999 for enabling them to make the balance payment. This undertaking was

signed by all the four accused and, no dispute is raised by Mr.Tulpule, the counsel appearing for the accused, about the same. Along with the undertaking accused No.2 filed an affidavit in the said court confirming and reiterating the stand taken in the undertaking and agreeing to make the payment. So far as the complaint filed by the accused with the Commissioner of Police, it has been stated in the affidavit that after the cheque was issued the firm of the accused had no immediate arrangement of loan therefore with a view to delay and discharge the said liability, they lodged complaint with the Commissioner of Police to the effect that the said cheques have been taken by the complainant by force and under threat. It is admitted in the affidavit that the accused had not pursued the complaint being incorrect.

4. As per the undertaking given and the affidavit, the accused thereafter subsequently paid Rs.One lakh only to the complainant and did not pay the remaining balance of Rs.Two lakhs. The Magistrate acquitted accused No.4 and convicted other three accused who preferred the appeal before the Sessions Court. Their

conviction was upheld. The sentence imposed upon them by the Magistrate of one year was reduced to six months. Hence the present appeal is arising out of acquittal of accused No.4 and the revision is arising out of that order of Sessions Court.

5. So far as the appeal against acquittal vide Appeal No.696 of 2000 i.e. acquittal of Accused No.4 Mrs.Adarsh Kohli is concerned, the Magistrate has given following reasonings in paras 13 and 14 which are as under :-

> Para 13 :- Now coming to the case of accused No.4. Admittedly she is a housewife staying in Delhi. In complaint itself complainant gave address of accused nos. 3 & 4 as H3/18, Model Town, Part II, Delhi-110 009. Notice was also issued to the same address which itself shows that accused no.4 is staying in Delhi. The partners can be held liable u/sec.141 of N.I.Act if it is shown that they being that they are in charge of day to day conduct of the business and playing active role

in the management and affairs of the firm. Here admittedly, accused no.4 is housewife staying in Delhi. Accused no.1 firm doing the business of spare parts, it is general experience that automobile spare parts are required to be used in the vehicles and generally only male/gents purchase these spare parts from the shops and when for running one shop other two partners were there, by no stretch of imagination it can be said that housewife also sit in the same shop with other two partners only for selling spare parts to the customers.

Part-14 :- It is observed by Their Lordships of Apex Court in the authority reported in AIR 1989 Supreme Court 1982 wherein it is held that :-

"More often it is common that

some of the partners of a firm may not even be knowing of what is going on day to day in the firm. There may be partners, better known as sleeping partners who are not required to take part in the business of the firm. There may be ladies and minors who were made for the benefit of partnership. They may not knowing about the business of the firm."

Considering the observations of Their Lordships of Apex Court in the case in hand also, considering the nature of business run by accused No.1 the partnership firm it cannot be said that accused no.4 she being a lady and housewife is responsible for day to day business of accused no.1 and therefore, she cannot be held responsible for the offence committed by the accused nos.1, 2

& 3 and therefore, she is entitled for acquittal."

6. I do not find that the reasonings are perverse. To the contrary, the conclusion arrived at by the Court are in conformity with the approved and proved facts. Therefore, the appeal against acquittal of accused No.4 has no merit and it is required to be dismissed.

7. So far as Revision against conviction is concerned, Mr.Tulpule, the counsel appearing for the accused, without going to the merits of the case, contended that the accused have paid Rs.One lakh as per their undertaking and affidavit and, after the conviction was maintained by the Sessions Court they have deposited Rs.Three lakhs Fifty Thousand before the Magistrate. According to him, the cheque was of Rs.Three lakhs and the accused have, in the aforesaid manner, deposited or paid Rs.Four lakhs Fifty thousand. Looking to the fact that the accused are belonging to the business community, this be treated as a case where no substantive sentence was called for. My attention was drawn to Section 138 of the Negotiable Instruments Act under which the sentence that is prescribed is imprisonment for a

term which may be extended to two years or with fine which may extend to twice the amount of the cheque, or with both. Mr.Tulpule, therefore, contended that even if the accused have committed certain lapses viz. not keeping the undertaking and not acting according to the affidavit and undertaking, the sentence of fine could be enhanced to twice the amount of the cheque, but no substantive sentence should be awarded to the accused.

8. On the other hand, Mr.Marwadi and Mr.Mundergi, the counsel appearing for the complainant in the appeal and the revision respectively, contended that not only the accused have shown their dishonesty by not acting as per the undertaking or as per their affidavit given to the court, but the accused have, in their statement under Section 313 of the Cr.P.C. recorded by the Magistrate during trial, gone to the extent of denying giving any such undertaking or affidavit in the very same court. They also contended that firstly lodging of false complaint against the complainant by the accused about forcibly taking cheques; secondly giving an undertaking and filing of affidavit in the court

not adhering to the same; paying only fraction of amount out of Rs.Three lakhs and denying to have filed any undertaking or affidavit in the Court in replies given to the questions framed under Section 313 of the Cr.P.C. by the Magistrate, particularly, Question No.6, totally goes to show that the accused have no regard for truth, no sanctity for judicial system and they could take stand as suits to their convenience and they could go to the extent of lodging false complaint; giving false affidavit and undertaking and even denying the proceedings before the Court by answering Question No.6 as under :-

> Q.6 : He further deposed that in the court on 11.3.99 all of you gave undertaking for making payment and you paid Rs.1 lac on 30.3.99, instead of 19.3.99. On 11.3.99 you sworned affidavit accepting your liability and lodging false complaint against him. Thereafter you failed to make payment. What you have to say about it?

Answer to this Question of accused Nos. 2 to 4

is as :-

"Ans.: It is not true."

9. In fact, all the accused are educated; they are doing business in Automobile Spare Parts; they know the importance and value of solemn affirmation given to the Court of law and also the undertaking given to the Court , but they have shown their courage to disown and deny their own affidavit and undertaking. It may be that the affidavit was filed by accused No.2 only. All this clearly shows that this is not a case where accused Nos. 2 and 3 should be let off only on fine. This is a case where substantive sentence is required. The trial Court has awarded imprisonment of one year to accused Nos. 2 and 3. It was reduced by the Sessions Court to six months. The submission of Mr.Tulpule for the accused that the accused may be directed to pay twice the amount of the cheque and some other amount as compensation cannot be accepted in the circumstances of the case. So far as sentence part is concerned, Mr.Marwadi and Mr.Mundergi contended that they leave the matter to the discretion of the Court. Hence I pass the following order :-

:ORDER:

1. Appeal No.696 of 2000 against acquittal of Accused No.4 Mrs.Adarsh Kaur Kohli is dismissed.

2. Revision Application No.121 of 2001 against conviction of Accused Nos. 2 and 3 is partly allowed. Conviction of Accused Nos. 2 and 3 under Section 138 of the Negotiable Instruments Act is maintained. However, their sentence is reduced to S.I. for three weeks and fine is enhanced to Rs.6,00,000/- [Rupees Six lacs.] out of which the accused have deposited Rs.3,50,000/- [Rupees Three lacs Fifty thousand] in the Court and paid Rs.1,00,000/- [Rupees One lac] to the complainant. Time till Monday i.e. 30.08.2004 is granted to the accused to pay the fine. In default, they will undergo R.I. for same period of 21 days (Twenty One days).

3. The Accused Nos. 2 and 3 shall give compensation of Rs.2,00,000/- [Rupees Two lacs] in addition to the complainant.

4. The entire amount of fine, excluding amount of Rs.25,000/-, and compensation of Rs.2,00,000/- [Rupees Two lacs] will go to the complainant.

5. Time to surrender and pay the remaining amount of fine and compensation is given to the accused till Monday i.e. 30th August 2004 by 4.00 p.m..

6. All concerned parties to act upon ordinary copy of this order duly authenticated by the Court Sheristedar.

[D.G.DESHPANDE]

24.08.2004 JUDGE.